

PROB. 12B
(7/93)

ORIGINAL

United States District Court

for the

DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAY 25 2006

at 10 o'clock and 10 min. M
SUE BEITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: AARON DOUGLAS FOSTER Case Number: CR 03-00598SOM-01

Name of Sentencing Judicial Officer: The Honorable Susan Oki Mollway
U.S. District Judge

Date of Original Sentence: 8/2/2004

Original Offense: Counts 1 and 2: UNLAWFULLY ENTERING A MOTOR VEHICLE
WITH INTENT TO COMMIT A CRIME, in violation of Hawaii
Revised Statutes (HRS) § 708-836.5 and 18 U.S.C. § 13, a
Class D felony

Original Sentence: Twelve (12) months and two (2) days imprisonment to be followed
by a three (3) year term of supervised release, as to each Count to
run concurrently, with the following special conditions: 1) That the
defendant participate in a substance abuse program, which may
include drug testing at the discretion and direction of the Probation
Office; 2) That the defendant is prohibited from possessing any
illegal or dangerous weapons; 3) That the defendant provide the
Probation Office and the Financial Litigation Unit of the U.S.
Attorney's Office access to any requested financial information to
include submitting to periodic debtor's examinations as directed by
the Probation Office; 4) Without the prior approval of the Probation
Office, the defendant shall not enter the Hawaii Volcanoes National
Park; and 5) That restitution of \$2,754.83 is due immediately to the
identified victims, and any remaining balance upon release from
confinement be paid during the period of supervision on an
installment basis according to the collection policy of the Probation
Office but at a rate of not less than 10 percent of his monthly gross
income.

Type of Supervision: Supervised Release Date Supervision Commenced: 7/25/2005

PETITIONING THE COURT

[X] To modify the conditions of supervision as follows:

General Condition *That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of commencement of supervision and at least two drug tests thereafter, but no more than one valid drug test per day.*

CAUSEViolation NumberNature of Noncompliance

1. General Condition

On 5/19/2006, the subject submitted a urine specimen that was presumptively positive for marijuana.

The subject began his term of supervised release on 7/25/2005. As a condition of supervision, the subject entered the drug aftercare program at the Drug Addiction Services of Hawaii, Inc. (DASH). Between 7/25/2005 and 4/17/2006, the subject was compliant with the conditions of supervision.

However, on 5/19/2006, the subject submitted a urine specimen at DASH that was presumptively positive for marijuana. The specimen was forwarded to Scientific Laboratories Inc. for confirmation testing. The results remain outstanding. When questioned about the positive urine specimen, the subject admitted that a few nights prior to 5/19/2006, he smoked a marijuana "joint" with friends. The subject stated that he was offered a marijuana "joint" and was unable to resist the temptation. The subject acknowledged that it was a mistake but noted that he has not used any illegal substances since that night. The subject further indicated that he would be willing to undergo increased drug treatment and testing.

As a result, the subject was referred to the Big Island Substance Abuse Council (BISAC) for application into their Intensive Outpatient Program (IOP). The subject will undergo an assessment at BISAC with the appropriate treatment to follow. Additionally, the subject will be returned to the highest level of drug testing.

Given the subject's desire to address his drug addiction, it is respectfully recommended that the Court take no action on the violation at this time and allow the subject to enter into substance abuse treatment at BISAC. Additionally, in light of U.S. vs. Stephens, it is recommended that the Court amend the mandatory Violent Crimes Control Act drug testing condition as noted above. The subject has a long history of abusing marijuana. The modification of this mandatory condition will provide the Probation Office with the necessary tools to monitor the subject and to protect the community.

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Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The subject waives his right to a hearing and to assistance of counsel. The subject agrees to the modification of the conditions of supervised release. The subject's attorney and the U.S. Attorney's Office have been notified of the proposed modification and have no objections to the modification.

Respectfully submitted by,



MARK T. NUGENT
U.S. Probation Officer

Approved by:



PETER D. YOSHIHARA
Supervising U.S. Probation Officer

Date: 5/22/2006

THE COURT ORDERS:

- ☒ The Modification of Conditions as Noted Above
☐ Other



SUSAN OKI MOLLWAY
U.S. District Judge

5/24/06

Date

05/22/2006 08:14 FAX

→ DASH HILO

002/002

PROB 49
(5/96)

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

- ☐ To extend the term of supervision for years, for a total term of years.
☒ To modify the conditions of supervision as follows:

General Condition

That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of commencement of supervision and at least two drug tests thereafter, but no more than one valid drug test per day.

Witness:



BRIAN HYATT

Drug Addiction Services of Hawaii Counselor

Signed:



Aaron Douglas Foster
Supervised Releasee

5-22-06

Date